



HEAD OFFICE  
Johannesburg  
1<sup>st</sup> Floor, Norfolk House  
Cnr 5<sup>th</sup> Street & Norwich Close  
Sandton, 2196  
PO Box 651826, Benmore, 2010  
Tel (011) 884-8454 □ Fax (011) 884-1144  
E-Mail: [enquiries-jhb@pfa.org.za](mailto:enquiries-jhb@pfa.org.za)

Cape Town  
2nd Floor, Oakdale House, The Oval  
Oakdale Road, Newlands, 7700  
P O Box 23005, Claremont, 7735  
Tel (021) 674-0209 □ Fax (021) 674-0185  
E-mail: [enquiries@pfa.org.za](mailto:enquiries@pfa.org.za)  
Website: [www.pfa.org.za](http://www.pfa.org.za)

---

Please quote our reference: PFA/NC/4550/2005/NVC

**Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): S H Moller v De Beers Pension Fund and De Beers Consolidated Mines (“De Beers” or “the employer”)**

### Introduction

[1] Your complaint concerns the calculation of your withdrawal benefit. The complaint was received by this office on 21 July 2005 and a letter acknowledging receipt thereof sent to you on 10 August 2005. On the same date a letter was dispatched to the respondents giving them until 1 September 2005 to submit their responses to the complaint. On 16 August 2005 the respondents requested an extension to 23 September 2005 and on 23 September 2005 the response dated the same day was received. The respondents copied you with their response. On 18 May 2006 you were requested to submit a reply to the response by 31 May 2006 and on 23 May 2006 your reply dated the same day was received. In view of your incorrect citing of the “De Beers Benefit Society” as the first respondent, “De Beers Pension Fund” was joined as a party to the complaint in terms of section 30G(d) of the Act and a response to your complaint was consequently requested from the fund, as stated above. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below. As the background facts are well known to all the parties, I shall only repeat those facts that are pertinent to the issues raised herein.

### Factual Background

[2] You commenced employment with Anglo American Corporation Gold Division on 28 December 1979 and joined the Mine Employees Pension

---

V Ngalwana (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shrosbree (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Senior Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator)

Office Manager: L Manuel

Fund, but when you were promoted to an official on 1 June 1980 you joined the Mine Officials Pension Fund (“MOPF”). On 1 June 1989 you commenced employment with De Beers and on the same date you joined the De Beers Pension Fund (“the fund”). You elected not to transfer your benefit from the MOPF to the fund. When you were advised, in November 2002, that the MOPF had become the Sentinel Mining Industry Retirement Fund (“Sentinel”), you elected to transfer your interest in that fund, amounting to R48 023.10 to the (De Beers) fund. The transfer was approved by the Registrar of Pension Funds on 5 May 2003.

- [3] You resigned from De Beers on 30 October 2005 and received a withdrawal benefit of R 1 790 808, before tax.

### Complaint

- [4] You were advised by the fund that the service that you accumulated while being a member of Sentinel, from 1 June 1980 to 1 June 1989, was not taken into account when the fund calculated your withdrawal benefit. You contend that had you been retrenched you would have received R1 194 239.94 more than what you in fact received. You want the fund to calculate your benefit based on 25 years service from 1 June 1980 up to the date of your withdrawal from the fund on 30 October 2005.
- [5] You state that the rules of the fund provide for the recognition of Sentinel membership provided the reason for exit is *retrenchment* and you feel it is anomalous not to make such a provision in the case of resignation. You want this tribunal to investigate the substantial loss that you have suffered due to the difference between a resignation benefit, on the one hand, and a retrenchment or a retirement benefit, on the other.

### Response

#### *Technical point*

- [6] The respondents say that the “De Beers Benefit Society” that you cite as the first respondent is not a party to this complaint and the complaint should be dismissed for non-compliance with the statutory framework. The respondents state in the alternative that, assuming the fund is joined as a party, it responds to the merits of your complaint.

#### *Merits*

- [7] The respondents contend that the information concerning your translocation benefit from Sentinel to the fund, which was regulated by special rules, was communicated to you on a regular basis. They state that you were advised on a number of occasions that in the event of “death in service, retirement or retrenchment”, you would receive full credit

for all your “previously condoned continuous service” which included the service while you contributed to Sentinel. However, in the case of *resignation* no more than a refund of the member’s own contributions to the fund, plus interest, plus a refund of the “Sentinel transfer value” would be payable. The transfer value from Sentinel is housed separately and is not used for purposes of enhancing the benefit in the fund. Thus, the respondents aver that the frequent communiqués to you alerted you to the fact that the Sentinel fund share was not absorbed by the fund, and was never meant to provide you with an enhanced benefit.

- [8] The respondents further state that the fund introduced special rules to cater for the transfer into the fund from Sentinel. These rules determine the only basis on which the fund accepts translocation benefits from Sentinel, as well as defining the benefit entitlements of those members to whom they apply.
- [9] According to the respondents the fund rules will comply with the statutory minimum benefit requirements with effect from 1 March 2005, pending approval by the regulatory authorities.

#### Determination and reasons therefor

##### *Technical point*

- [10] I have joined the fund as a party with a substantial interest in this matter and therefore the technical point raised by the respondents is dismissed.

##### *Merits*

- [11] In terms of rule A8.1.1 a member who resigns or is dismissed and who does not qualify for retirement benefits, is entitled to a refund of his “accumulated contributions”. Rule A8.1.2 states that the member who receives a benefit in terms of rule A8.1.1 shall also receive benefits determined by the trustees, in consultation with the actuary, in respect of the “member’s individual account balance”.
- [12] The term “accumulated contributions” is defined as the sum of the member’s contributions to the fund plus the member’s transfer contributions, plus interest, calculated at a rate decided by the trustees from time to time, but excludes “transfer contributions received in terms of rule A10.3.0”, which are to be retained separately.
- [13] The “member’s individual account” is the account that is established for the member and which contains his transfer contributions in respect of additional voluntary contributions that he makes to the fund and includes withdrawal benefits to which he had become entitled from an approved

- pension or provident fund of a non-associated company or organization.
- [14] Rule A10.3.0 contains special provisions applicable to transfers from Sentinel in respect of members with “condoned service” from 1 March 2001. “Condoned service” is defined as the member’s Sentinel service, which the employer has approved as continuous condoned group service eligible for supplementation and accepted as such by the trustees. Your condoned service commenced on 1 June 1980 when you were promoted to an official, transferring from the Mine Employees Pension Fund to the MOPF, in terms of the Sentinel rules. The transfer benefit from Sentinel is split into two sections, namely the condoned service transfer amount and the non-condoned service transfer amount. The condoned service is used for supplementation in certain circumstances only, such as when the benefit is preserved or when the member retires or is retrenched. If it is not to be used for enhancement, the benefit becomes an ordinary transfer amount that is transferred to the member’s individual account, in terms of rule A10.3.1.4.2.
- [15] Rule A10.3.1.4 states that members with “condoned service” will be granted additional pensionable service which will be used in the calculation of benefits, with certain exceptions as set out further in the rule. One such exception concerns withdrawal from the fund as a result of resignation from service. In such circumstances, the MOPF credit is transferred to the member’s individual account.
- [16] Therefore, in effect, the resignation benefit is equal to a refund of the member’s contributions to the fund, plus any voluntary contributions, plus transfer amounts, plus interest. This benefit is not enhanced by service counting either as condoned or as pensionable service.
- [17] You state that you have forfeited R1 194 239.94 due to resigning from the employer as opposed to being retrenched. Had you elected to preserve or defer your benefit, it would also have been subject to enhancement. You are entitled to the benefit as set out in the rules of the fund, and from the evidence you have received the benefit calculated in terms thereof.
- [18] I do not have equity based authority whereby I may pronounce on the fairness of a benefit. This office applies the rules of the fund and relevant legislation in the adjudication process.
- [19] However, with effect from 7 December 2001 the Act was amended to make provision for the payment of minimum benefits to members who exit from a fund in circumstances other than retirement or the liquidation of the fund. The provisions of this minimum benefit legislation are mandatory for every fund registered prior to 7 March 2002, effective from a date 12 months after the fund’s surplus apportionment date (section 14A(2)(b)).

The fund has advised that its surplus apportionment date was 1 March 2004. Since you exited on 30 October 2005, more than 12 months after that date, you are entitled to your minimum individual reserve as described in section 14A and B of the Act. As the Act overrides the rules, there is no question of waiting for the registration of a rule amendment for the requirement to become operative. If the benefit you received on exiting the fund was less than the minimum benefit, then you are entitled to the difference with immediate effect. The order of this tribunal is therefore as follows:

Relief

[20] The board of management of the fund is directed to:

[20.1] calculate the benefit due to you as a result of your resignation on 30 October 2005 in terms of section 14A and B of the Act with regard to the minimum individual reserve;

[20.2] pay you the amount calculated in [20.1] less any amounts already paid to you as a result of your resignation, less any permissible deductions in terms of the Act, plus interest at the rate of 15.5% per annum, from 30 October 2005 to the date of payment, within four weeks of the date of this determination.

Dated at Cape Town on this the                      day of                      2006.

Yours faithfully

**Vuyani Ngalwana**  
**Pension Funds Adjudicator**

